MISCELLANY.

Can Ratification of an Amendment to the Constitution Be Made to Depend on a Referendum?—The Supreme Court of the United States will have to construe Article V of the federal Constitution, prescribing the method of adopting amendments to that instrument. First it will have to clear up doubt as to when the Eighteenth Amendment was adopted. The Ohio legislature ratified it, and then on referendum it was disapproved by the electors of Ohio. The Secretary of State of the United States proclaimed the Amendment when Ohio ratified it. If the referendum defeated the ratification by Ohio, then the date of its going into effect is postponed until some state acting thereafter ratified it. This date is important by reference to it in criminal and other statutes.

Again the Ohio Legislature ratified the woman suffrage amendment, but a petition for its referendum to the electors under the Ohio constitution has been filed and the election cannot be had until the general election in November next. Thirty-five states have ratified the suffrage amendment, including Ohio. If the Louisiana legislature, which is to consider the amendment in this month of May, or that of any other state, ratifies, then the Amendment will be adopted by the requisite thirty-six states, unless the pending referendum in Ohio prevents the action of the Ohio legislature from being a valid ratification until sustained by a popular vote. It is possible, therefore, that the question whether women will vote at the next Presidential election will turn on the view the Court takes of Article V. Can ratification of a state under it be made by a state constitution to depend on the result of a referendum to the voters of the state? This is the question.

It reads as follows:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

The precise question is whether the word, "Legislatures," as used in this article, means the law-making powers of the states, or whether

it means the representative political bodies called "Legislatures." Such authorities as there are upon this point are not in accord.

In *State ex rel. Mullen v. Howell, Secretary of State,*[1] the issue arose on a petition for *mandamus* against the Secretary of State of Washington to compel him to receive and file a petition for a referendum to the electors of the state of the resolution of the Washington legislature ratifying the Eighteenth Amendment. The court held by a vote of six to three that the provision in the state constitution for a remerendum of all acts, bills, or laws, passed by the legislature of the states subjected the resolution of ratification to a referendum, on the ground that the word "Legislatures" under Article V meant and included the law-making or legislative power of the states.

In *Hawke v. Smith, Secretary of State,*[2] the Supreme Court of Ohio, with one dissenting judge, sustained a refusal of the lower court to enjoin the Secretary of State from submitting a referendum on a legislative resolution of ratification of the same amendment on the same ground as that taken by the Washington court. In Ohio the electors voted against ratification. In this case, the Constitution of Ohio specifically provided that resolutions ratifying amendments to the federal Constitution should, on the filing of a proper petition, be submitted to the electors.

In *Herbring v. Brown, Attorney General,*[3] the same question arose in Oregon, but the provision for a referendum under the state constitution was held not to include joint resolutions of the kind, and the federal question was not decided.

On the other hand, in *Ex parte Dillion,*[4] the petitioner for a writ of *habeas corpus,* in custody for violation of a section of the National Prohibition Act which by its terms took effect at the same time as the Eighteenth Amendment, maintained that the Eighteenth Amendment had not gone into effect because of the referendum in Washington and Ohio. Judge Rudkin, District Judge, held that under Article V of the federal Constitution only a ratification by state legislatures was necessary, and that it was not within the power of a state in its constitution to add to such ratification the requirement of a referendum.

In re the Opinion of the Justices[5] the Supreme Justices of Maine made answer to a question of the Governor of the state, that Article V of the federal Constitution did not permit the ratification of an amendment to be submitted to a referendum under the state constitution.

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[1] (1919, Wash.) 181 Pac. 920.
[2] (1919, Ohio) 126 N. E. 400.
[3] (1919, Ore.) 180 Pac. 328.
[4] (1920, N. D. Calif.) 262 Fed. 563.
[5] (1919, Me.) 107 Atl. 673.

The reasoning used to sustain the Ohio and Washington cases is neither close nor satisfactory. That of Judge Rudkin and the Maine Justices is convincing.

This is a purely federal question, the answer to which state constitution cannot change. Therefore, the fact that the Ohio constitution specifically requires a referendum to the people on federal Amendments does not affect the question, which is solely one of state power. If the word "Legislatures" is merely *corpus designatum*, then there is no power in those adopting state constitutions to make it otherwise.

Except in the election of members of the House of Representatives, the federal Constitution nowhere submits any governmental issue directly to the electors. In the election of President and Senators the issue was left to a representative body elected by the people. The Constitution itself was submitted to the people for adoption by conventions in each state elected by the people. Its amendment or revision was to be submitted to similar representative bodies, to wit, the two houses of Congress, and to the legislatures of the states. This was, in the judgment of those who made and ratified the Constitution, a sufficient submission to the will of the people under the principles of popular representative government.

Chief Justice Marshall, speaking for the Court in *McCullough v. Maryland*, says that the Constitution was adopted by the people of the United States, and not by the states, that

"by the Convention, by Congress, and by the State Legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in Convention. It is true, they assembled in their several States—and where else should they have assembled? * * * From these Conventions the Constitution derives its whole authority. The government proceeds directly from the people."[6]

In *Dodge v. Woolsey* Mr. Justice Wayne, speaking for the supreme Court on the supremacy of the Constitution of the United States over state constitutions, says:

"It is supreme over the people of the United States, aggregately and in their separate sovereignties, because they have excluded themselves from any direct or immediate agency in making amendments to it, and have directed that amendments should be made representatively for them, by the Congress of the United States, when two thirds of both Houses shall propose them; or when the legislatures of two thirds of the several States shall call a convention for proposing amendments, which, in either case, becomes valid, to all intents and purposes, as a part of the constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths of them, as one or the other mode of ratification may be proposed by Congress."[7]

[6] (1819, U. S.) 4 Wheat. 316, 403.
[7] (1885, U. S.) 18 How. 331, 348.

When the federal Constitution was adopted, and it is as of that time we are to reach the meaning of words in the instrument, only eight state constitutions contained any provision for their amendment at all, and of these the power was vested with certain restrictions in the legislatures of three of them, and in the other five it was given to conventions to be called for the purpose. Not until 1818 was there any provision for amendment of a state constitution by direct submission to the vote of the people.

That it was the intention to submit the ratification to the popular representative bodies named, and not to their constituencies, is clearly shown by the alternative for the state legislatures which under the Article, Congress in its discretion may substitute as the ratifying agencies. These are conventions in the state called for the purpose. These are the same kind of representative bodies which adopted the Constitution and exclude necessarily any idea of further submission to the people directly of the proposed amendment.

This, too, disposes of the argument adopted by the Washington and Ohio courts, that the word "Legislatures" means the law-making power of the states, for certainly a convention called for the purpose of ratifying an amendment is not part of the law-making power of the state.

The unsoundness of this view is further shown by the fact that nowhere in the actual practice under Article V is proposal or ratification of amendments carried on as general legislation must be under the Constitution. If proposal or ratification were mere law making, then under section 7, Article I, action of the two Houses of Congress must be submitted to the President for his approval or disapproval. Yet in *Hollingsworth v. Virginia*[8] it was held that a proposal by two-thirds of both Houses was sufficient under the article without submitting it to the President for his approval or disapproval, and this view has been confirmed by the practice since and by express resolutions of the Senate.

If ratification by state legislatures under Article V was the exercise of general legislative power of the states, then the Governors of the states must exercise the same power of veto over the resolution of ratification as they do under their respective constitutions over general legislative acts. Yet the uniform practice since the beginning of the Government has been not to submit such resolutions to the state Governors for their action.

The majority opinions in the Washington and Ohio cases place much reliance on the decision of the Supreme Court of the United States in *Davis v. Ohio*.[9] The constitutional provision there under

[8] (1798, U. S.) 3 Dallas, 378.

[9] (1916) 241 U. S. 565, 36 Sup. Ct. 708. [The view advanced in this article has been adopted by the United States Supreme Court in the *Ohio Referendum Cases*, decided June 1, 1920. Ed.]

consideration was Article I, Section 4, as follows:

"The times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

The issue there was whether a law of Ohio, passed by the legislature, redistricting the state for Congressmen under a new apportionment by Congress, was subject to a referendum under the state constitution. The effect of the judgment of the Court was that the words "prescribed in each State by the Legislature thereof" meant prescribed by the legislative or law-making power of the state, and therefore that the redistricting law of Ohio passed by the Legislature of Ohio, was subject to any general limitation imposed by the state constitution in enacting laws for the state. The majority opinions in Ohio and Washington insist that this Article 1, Section 4, is in *pari materia* with Article V, and the word "Legislature" in the former is to be given the same meaning as the word "Legislatures" in Article V. It is impossible to yield to such a conclusion. The function given to the legislature in Article I, Section 4, is plainly that of making a law of Ohio just like any other law of the state. The law is to regulate the congressional and senatorial elections held in the state, and differs from other laws only in the circumstance that the power to make it comes from the federal Constitution, and that Congress may alter it. The law is to cover the times, and manner of holding such elections. Certainly this is the conferring of a purely general legislative power upon the state, to be exercised as that power is exercised under its constitution. Such redistricting laws are submitted to Governors for the exercise of their power of approval or disapproval as any other law is. Under Article V, however, the state legislatures have no discretion to exercise general legislative power. All they can do is to ratify or reject. They can not amend, qualify or change. What they exercise is a veto power rather than a legislative power. Theirs is a very limited function. The difference between the two clauses is so wide that the decision of the federal Supreme Court is easily distinguished from the case here and has no bearing upon it.—*William Howard Taft in Yale Law Journal.*

Leopard Injures Boy at Circus.—A 10½ year old boy, after having paid the price of admission to a circus, entered the menagerie tent to see the animals, which were confined in cages arranged in a row around the circular walls of the inclosure. The cages were guarded by a rope placed at such a distance that it kept spectators from ap-

proaching near enough to be in danger. After trying to get into the main tent where there was a crowd in the passageway, the boy and a companion turned aside and remained to take another look at the animals. To enable themselves to get a better view, they walked under a guard rope, and into a small space between a leopard cage and the side wall of the tent. While the boy was in this position the leopard reached his paw between the perpendicular cage bars and struck the boy's face, injuring his eye. In an action for the injuries sustained, the trial court found that the boy was injured solely because he willfully and knowingly, and without cause or excuse, placed himself within reach of the wild animal, which he knew to be ferocious and dangerous, and that defendant was not negligent. Judgment was for defendant, which the California District Court of Appeal, First District, Division 1, affirmed with an opinion by Waste, P. J., which is reported in Opelt *v.* Al. G. Barnes & Co., 183 Pacific Reporter, 241. The concluding paragraph of the opinion is as follows:

"Just how far to apply the rule of accountability to a bright 10 year old boy, at a circus, with the allurement and excitement attendant thereto, and keeping in mind the propensity to curiosity every normal boy possesses, was, no doubt, a matter of grave concern to the trial court, as it has been to us. The court below, having before it all the facts and witnesses in the case, and particularily having an opportunity to hear the testimony, observe the actions, and determine the intelligence of the injured boy, has determined and announced its conclusion, which we do not feel we may properly reject."

Proximate Cause in Relation to the Workmen's Compensation Acts. —The comparatively recent legislation defining in statutory terms the employer's liability to his employee has given rise to many interesting and varied decisions to the nature and scope of that liability. The purpose and general effect of the acts are fairly well recognized, it being conceded that the liability arises out of the contract relation of employer and employee and that the compensation is awarded not so much for the wrong done as for the injury sustained in the course of that relation. The law, in other words, now looks upon the workman as a machine of the employer, which, if broken, industry must replace by adequate compensation the same as it must needs do as to its other mechanical devices.

Thus, negligence as the gist of the recovery has been abandoned,[1] the intent of the legislature, in this instance, being to simplify the means of recovery for injuries sustained while working for the employer. Ancillary to this abandonment, the defenses of contributory negligence, fellow servant, and assumption of risk are abrogated as

[1] Bradbury, Workmen's Compensation Law Chap. 1 Sec. 1.

a matter of course.[2] What, then, is the scope or extent of the employer's liability under these acts? The employer has never been an insurer.[3] He was liable only for negligent acts or omissions,[4] the principles of negligence being followed in the determination of his liability.[5] The question at once arises how far those principles have been carried in the construction of the Workmen's Compensation Acts.

Certainly, it would be opposed to any possible conception of justice that anyone should be required to answer for harm unless he had actually caused it. As to what is to be regarded as the cause of any given result admits of much difference of opinion, and the decisions on this point in cases of negligence are too numerous for citation. In other words, it is quite obvious that the troublesome problem of proximate cause is bound to be carried from cases involving negligence to cases covered by the compensation statutes.

The question of proximate cause is usually one for the jury, solved according to what men like themselves would actually foresee as a result likely to take effect from the given cause or the conduct in question. So, if the wrongfulness of the act be admitted, it is the actual course of nature depending on the orderly operation of natural forces, never forgetting the usual and customary habits of mankind in the premises and under the given circumstances, by which the proximity of the act to the injury is ascertained. The doctrine of novus actus interveniens always asserts itself in these cases, because it forms the basis of the controversy, viz., the more immediate cause of the injury; but the weight of authority is to make the liability of the original actor depend upon whether such negligent or even wilful act of the intervening third party was foreseeable.[6] Summed up, the real question always is whether the act caused injury,[7] in which case the act is considered the proximate cause of the resulting in-

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[2] Minn. G. S. 1913, Sec. 8196; Opinion of Justices, (1911) 209 Mass. 607, 96 N. E. 308.

[3] Blick *v.* Olds Motor Works, (1913) 175 Mich. 640, 141 N. W. 680, 49 L. R. A. (N. S.) 883, and note.

[4] Ward *v.* Ely-Walker Dry Goods Building Co., (1913) 248 Mo. 348, 154 S. W. 478, 45 L. R. A. (N. S.) 550.

[5] Miller *v.* Kelly Coal Co., (1909) 239 Ill. 626, 88 N. E. 196, 130 Am. St. Rep. 245.

[6] Pollock, Torts 37; note 8, infra; Stone *v.* Boston, etc., R. Co., (1898) 171 Mass. 536, 51 N. E. 1, 41 L. R. A. 794; Burrows *v.* March Gas & Coke Co., (1872) L. R. 7 Exch. 96, 41 L. J. Ex. 46, 26 L. T. 318, 20 W. R. 493; Englehart *v.* Farrant & Co., (1897) L. R. 1 Q. B. 240, 66 L. J. Q. B. 122, 75 L. T. 617, 45 W. R. 179; McDowall *v.* Great Western Ry. Co., (1903) L. R. 2 K. B. 331, 72 L. J. K. B. 652, 88 L. T. 825. See Green-Wheeler Shoe Co. *v.* Chicago, etc., R Co., (1906) 130 Iowa 123, 106 N. W. 498.

[7] Pierce *v.* Michel, (1895) 60 Mo. App. 187.

jury.[8] These are familiar principles of the law of negligence upon which it is not necessary to elaborate.

But in workmen's compensation cases the liability is founded, not on negligence, but on the idea that industry, rather than the injured employee, should bear the burden. The inquiry in such cases, therefore, is not so much whether the injury ultimately sustained resulted directly or proximately from a negligent act of the employer, as whether the injury resulted from an accident arising "out of and in the course of" the employment. More specifically stated: Where, in the course of his employment, an employee sustains an accidental injury which is, in itself, trifling, but, by reason of an intervening agency, is aggravated and converted into a totally different and more serious injury, is the doctrine of proximate cause, as expounded in cases of negligence, applicable so as to hold the employer under these statutes?

It is obviously necessary to show that the aggravated condition is one "arising out of and in the course of the employment."[9] There are innumerable decisions as to the scope of this phrase, but, broadly speaking, the courts have leaned toward a liberal construction of this section of the statute.[10] In *Re McNicol*,[11] the following test was laid down: "It 'arises out of' the employment, when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work, and to have been contemplated by a reasonable person familiar with the whole situation, as a result of exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause, and which comes from a hazard to which the workman would have been equally exposed apart from the employment".

If the above test is law, it is not unfair to assume that the casual relation necessary to be established in cases of negligence is also indispensable under the Workmen's Compensation acts in cases of aggravation of a previous physical condition traceable to an accident suffered in the course of the employment and growing out of it and in cases of disease contracted in consequence of conditions created

[8] Fraser *v.* Chicago, etc., Ry. Co., (1917) 101 Kan. 122, 165 Pac. 831; Wegner *v.* Kelly, (Iowa 1917) 165 N. W. 449; Walmsley *v.* Rural Telephone Ass'n of Delphos, (1917) 102 Kan. 139, 169 Pac. 197.

[9] Bradbury, Workmen's Compensation Law Chap. 2 Sec. 5; Casualty Co. of America *v.* Industrial Accident Commission, (Cal. 1917) 169 Pac. 76.

[10] Holland-St. Louis Sugar Co. *v.* Shraluka, (Ind. 1917) 116 N. E. 330.

[11] (1913) 215 Mass. 497, 102 N. E. 697, L. R. A. 1916A 306.

in the course of employment. Assuming, now, that a slight accident occurs to an employee while in the course of his employment and the slight injury sustained therefrom is aggravated by some outside agency producing a serious result, what, if any, liability have the courts in this country and England imposed upon the employer under the statute?

There are a number of so-called "infection cases" in which there exists a wide contrariety of result, but even in those cases which deny liability the courts apparently apply the principle of liability where a causal connection is shown. In a very recent English case,[12] where gonorrhoæal infection set in from contact with some unknown third person or thing in an effort to get relief from a chip of brick which accidentally flew in plaintiff's eye during the course of employment without inflicting injury, it was held that the workman could not recover, as there was novus actus interveniens, which was the sole cause of the injury. And so in a Michigan case,[13] it was held that the loss of an eye through infection carried to it by the fingers of the workman himself, when attempting to allay irritation caused by steel splinters which lodged in it from a machine on which an employee was working, was not an injury arising out of and in the course of employment. The L. R. A. annotation to this case [14] confirms this ruling as the general trend of authority in cases of this class; but such a decision cannot and does not countenance the idea that an injury suffered in the course of employment is outside the pale of the statute, when such injury is aggravated by a supervening cause which might reasonably have been anticipated. In fact, the supreme court of Michigan, in a case with the same principles involved, came to an opposite finding one year later.[15] The courts say that infection which destroys the sight of the eye is not reasonably accounted for except as coming through or resulting from the accident. True, they do not overrule the *McCoy* case, supra, but justify it on the ground that the plaintiff therein had a latent disease. Many courts in this country and England draw this distinction, some holding a latent disease defeats recovery, and others allowing recovery even though the evidence discloses the existence of such disease before the accident.[16]

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[12] Doolan *v.* Henry Hope & Sons, Limited, (1918) 119 L. T. Rep. 14.

[13] McCoy *v.* Michigan Screw Co., (1914) 180 Mich. 454, 147 N. W. 572, L. R. A. 1916A 323, and note.

[14] L. R. A. 1916A at page 326.

[15] Cline *v.* Studebaker Corporation, (1915) 189 Mich. 514, 155 N. W. 519, L. R. A. 1916C, 11339.

[16] The following authorities hold the employer liable even if there exists a latent disease: Miller *v.* St. Paul City Ry. Co., (1896) 66 Minn. 192, 68 N. W. 862; Lloyd *v.* Sugg & Co., (1900) L. R. 1 Q. B. 481, 69 L. J. Q. B. 190, 81 L. T. Rep. 768, 48 W. R. 257; Indianapolis Abattoir Co. *v.* Coleman, (Ind. App. 1917) 117 N. E. 502. Contra:

Minnesota is definitely committed to the doctrine of Cline *v.* Studebaker.[17] The authority, generally speaking, by dicta and decision is all in favor of this conclusion, the only limitation being that it is a question of fact for the jury to determine.[18]

Clearly, it is the injury which is sought to be recompensed by the statute; and where the injury results from an accident suffered in the course of employment; even though there be concurring agencies aggravating it, and but for those concurring agencies it would have been trivial, the employee should not be confined to his common law remedy. The Acts provide for accidents suffered in the course of employment, and where such an accident is the proximate cause of the injury, the injured workman should be allowed compensation under the statute. As the "infection cases" (and they are border line cases, even where recovery is based on negligence), were decided principally on their own peculiar facts, and as it is easy to reconcile their contradictory decisions as not being repugnant to the principles here urged, it may be said that the law of proximate cause is applicable in determining the question of the employer's liability under the Workmen's Compensation Acts.—*Minnesota Law Review.*

Leniency in Suspending Attorney in Order to Prevent Loss to Clients.— A Montana attorney obtained the substitution of a personal undertaking for a cash bail, and received two checks from the county treasurer. He delivered one of the checks to his client, and indorsed the other and used the proceeds for his own use, but subsequently repaired it. For this and other reasons he was charged with professional misconduct by the Attorney General, and the case referred to an attorney to take testimony, report findings, and make recommendations. The referee recommended that the accused be suspended for a period of six months.

The Supreme Court of Montana, in Re Lunke, 182 Pacific Reporter, 126, reduced the period of suspension recommended by the referee for the following reasons, which are quoted from the opinion of Judge Holloway: "The record discloses that the general manner in which the accused has conducted his business, if persisted in

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Blair *v.* Omaha Ice & Cold Storage Co., (Neb. 1917) 165 N. W. 893; Stombaugh *v.* Peerless Wire Fence Co., (Mich. 1917) 164 N. W. 537.

[17] State ex rel. Adriatic Mining Co. *v.* District Court of St. Louis Co., (1917) 137 Minn. 435, 163 N. W. 755, L. R. A. 1917F 1094.

[18] Kiser, Workmen's Compensation Cases 73, 74, and cases cited; Elk Grove Union High School District *v.* Industrial Accident Comm'n, (Cal. 1917) 168 Pac. 392; In re Harraden, (Ind. App. 1917) 118 N. E. 142; Larke *v.* John Hancock Mutual Life Ins. Co., (1916) 90 Conn. 303, 97 Atl. 320; In re Sponatski, (1915) 220 Mass. 526, 108 N. E. 466; Archibald *v.* Workmen's Compensation Commn'r, (1916) 77 W. Va. 448, 87 S. E. 791; Sullivan *v.* Modern Brotherhood, (1911) 167 Mich. 524, 133 N. W. 486, 42 L. R. A. (N. S.) 140, Ann. Cas. 1913A 1116.

must of necessity involve him in more serious difficulties. Many men, prominent in professional and business life, have testified that, prior to the time these charges were made, the accused bore an excellent reputation, and was considered entirely trustworthy in the practice of law. It is further disclosed that he has a considerable amount of business now on hand, and that the interests of his clients must suffer greatly if he is deprived of the right to practice for the remainder of the year. To the end that the burden of punishment shall fall upon him, rather than upon his clients, and that every opportunity may be afforded him to reform and practice, we have concluded to substitute, for the punishment recommended by the referee, a shorter period of suspension, and the payment of the expenses incurred by the state in this proceeding, as a condition precedent to his right to reinstatement".

Can the Commonwealth Obtain Change of Venue in Criminal Cases without the Consent of the Accused?—§ 4914 of the Virginia Code of 1919 provides:

"A circuit court may, on motion of the accused or of the Commonwealth, for good cause, order the venue for the trial of a criminal case in such court to be changed to some other circuit or corporation court, and in like manner the court of a corporation may order the venue to be changed to some other circuit or corporation court."

In view of the language of Article I, § 8 of the Virginia State Constitution, guaranteeing to a person accused of crime "a speedy trial by an impartial jury of his vicinage", we think § 4914 unconstitutional in so far as it permits a change of venue on the motion of the Commonwealth and against the objection of the accused.

As this section stood before the last revision of the Code, it permitted a circuit or corporation court to order a change of venue on motion of the accused or of the Commonwealth without the necessity for showing cause, or for good cause the court could order a change of venue of its own violation without any motion whatever. The words in the revised section "for good cause" were also made applicable by the revisors to a change of venue made on motion, and in the revisors' note it is admitted that as the section formerly stood it was clearly unconstitutional, at least in so far as it permitted the Commonwealth to have a change of venue on motion without showing cause.

We fail to see how the addition affects the constitutionality of the statute in any manner. The language of the Constitution appears clear, concise and capable of but one construction. The only controversy that can arise is the question of the area intended to be covered by the use of the word "vicinage".

Mr. Black, in his Law Dictionary, has defined this word as "neighborhood; section near dwelling; vicinity. In modern usage it means

the county where a trial is had, a crime committed, etc.", while in many cases it has been defined as "the county in which the crime was committed".[1]

There seems to have been no decision covering the point in Virginia, but since the present Constitution was adopted in 1902, it must clearly have been drawn under the modern conception of the definition. The Tennessee Constitution contains a provision that the accused shall be tried in the county or district in which the crime was committed. In a leading case in that State, the defendants had been indicted in Munro County for murder, and on the order of the court the venue was changed to the county of Blount. The defendants were there convicted, motion for a new trial being refused. The defendants then moved in arrest of judgment, which motion was sustained and judgment on the verdict arrested. On appeal, the Supreme Court of Appeals of Tennessee sustained the Circuit Court of Blount County in refusing judgment on the verdict. Judge Hall, in his opinion, said, "The right of the accused to be tried in the county in which the offense is alleged to have been committed is a right secured to him by the Constitution of the State, and of which he cannot, in any case, be deprived without consent given in open court".[2]

The scope of this note does not permit dealing with the subject at length, but in general it may be said that while no case has been found construing the word "vicinage" in such a provision, the decisions throughout the country are unanimously to the effect that in those States whose Constitutions secure to accused persons the right to be tried in the "county or district" where the crime was committed a change of venue can be made only with the consent of the accused.[3]

We therefore submit that Article I, § 8 was drawn under the modern conception of the definition of the word "vicinage", that it was the intent of the drawers to secure to accused persons the privilege of trial in the county wherein the offense had been committed, and that part of § 4914 of the Virginia Code of 1919 permitting a change of venue on motion of the Commonwealth, and against the objection of the accused, is unconstitutional and void.—*Va. Law Review.*

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[1] State *v.* Crinklaw, 40 Neb. 759, 59 N. W. 370; Convers *v.* R. Co., 18 Mich. 459; Taylor *v.* Gardiner, 11 R. I. 182; *Ex Parte* McNeeley, 36 W. Va. 84, 14 S. E. 436, 15 L. R. A. 226, 32 Am. St. Rep. 831.

[2] State *v.* Denton, 6 Cold. (Tenn.) 539.

[3] Dougan *v.* State, 30 Ark. 41; State *v.* Knapp, 40 Kan. 148, 19 Pac. 728; Wheeler *v.* State, 24 Wis. 52; *Ex Parte* Rivers, 40 Ala. 712; CLARK, CRIMINAL PROCEDURE, p. 486.

Advice to a Young Lawyer—The following excellent advice in pleasing form is attributed to Chief Justice Story, eminent as a scholar and jurist.

Whene'er you speak, remember every cause
Stands not on eloquence, but stands on laws;
Pregnant in matter, in expression brief,
Let every sentence stand with bold relief;
On trifling points, nor time, nor talents waste,
A sad offense to learning and to taste;
Nor deal with pompous phrase; nor e'er suppose,
Poetic flights belong to reasoning prose.

Loose declamation may deceive the crowd,
And seem more striking, as it grows more loud;
But sober sense rejects it with disdain,
As naught but empty noise, and weak, as vain.
The froth of words, the schoolboy's vain parade
Of books and cases—all his stock in trade—
The pert conceits, the cunning tricks, and play
Of low attorneys, strung in long array,
The unseemly jest, the petulant reply,

That chatters on, and cares not how, or why,
Studious, avoid—unworthy themes to scan—
They sink the speaker, and disgrace the man.
Like the false lights, by flying shadows cast,
Scarce seen, when present, and forgot, when past.

Begin with dignity; expound with grace
Each ground of reasoning in its time and place;
Let order reign thruout—each topic touch,
Nor urge its power too little, or too much.
Give each strong thought its most attractive view,
In diction clear, and yet severely true.
And, as the arguments in splendor grow,
Let each reflect its light on all below.
When to the close arrived, make no delays,
By petty flourishes, or verbal plays,
But sum the whole in one deep, solemn strain,
Like a strong current hastening to the main.